

TOWN OF KITTERY, MAINE  
PLANNING BOARD MEETING  
Council Chambers

APPROVED  
July 26, 2012

Meeting called to order at 6:10 p.m.

Board Members Present: Thomas Emerson, Robert Melanson, Rich Balano, David Kelly

Members absent: Susan Tuveson, Deborah Driscoll, Ann Grinnell

Staff: Gerry Mylroie, Town Planner

Pledge to the Flag

**Minutes: July 12, 2012**

**Mr. Kelly moved** to accept the minutes of July 12, 2012 as submitted

**Mr. Balano seconded**

**Motion carries unanimously by all members present**

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

**Earldean Wells** asked for an update on the York Hospital site issue regarding the chiller units.

**Mr. Mylroie** stated York Hospital has responded to the notice of violation, but due to the absence of the CEO a final determination has not been made.

There was no further public comment.

**ITEM 1– Briefing on Zero Waste Plan for the Town of Kittery and other Public Works Projects.**

For information and comment. Presenter is Kittery Public Works Commissioner, Mary Ann Conroy.

Mary Ann Conroy explained that zero waste is to make everything recyclable creating zero waste. She referenced the Austin, Texas plan by which they are hoping to model Kittery's plan. Currently the town is at 34% recycled waste. The zero waste goal is estimated to take place over a 30-year period, with increased recycling measured in 5 and 10 year increments. She noted the 'Freebie Tent' will remain open as long as possible in a continuing effort to reduce the tonnage. Schools compete in recycling efforts, and composting will be encouraged. An awareness kick-off event is scheduled for September 23, 2012 which will include education efforts and community activities. **Mr. Mylroie** noted public services and streamlining waste is part of the comprehensive plan.

**Public Hearing**

**ITEM 2– 8 & 10 Pettigrew Road –Subdivision Plan Review– Minor Subdivision.** Action: hold a Public Hearing and approve or deny subdivision plan. Gary and Angela Hayward, owner and applicant, requests approval to create a subdivision to include three dwelling units located in the Residential Rural Zone, Tax Map 54, Lots 4A, 4A1 and 4A2. Agent is Ken Markley, North Easterly Survey, Inc.

**Ken Markley** summarized the application, noting the road and right-of-way has been approved by the Town. The addition of a dwelling unit over the existing garage creates a subdivision. The applicant is requesting six waivers, and Mr. Markley summarized these requests.

There was no one present to speak for or against this item, and the Public Hearing opened and closed at 6:20 p.m.

**Mr. Balano moved** to grant preliminary plan approval to Gary and Angela Hayward to create a subdivision located at 8 and 10 Pettigrew Road, Tax Map 54, Lots 4A, 4A1 and 4A2 in the Residential Rural Zone.

**Mr. Kelly seconded**

**Motion carries unanimously by all members present**

Board members concurred that final plan approval may be given at this time due to the uncomplicated nature of the application.

Mr. Kelly read the Findings of Fact as follows:

Gary and Angela Hayward, owner and applicant, requests approval to create a subdivision to include three dwelling units located in the Residential Rural Zone, Tax Map 54, Lots 4A, 4A1 and 4A2. Agent is Ken Markley, North Easterly Survey, Inc.

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the "Plan"), prepared by Easterly Survey, Inc.:

1. Minor Subdivision Plan dated 6/4/2012 - *Hayward Subdivision for Property at 16 Shade Tree Lane & 8&10 Pettigrew Road, Tax Map 54, Lots 4A, 4A-1 and 4A-2*

Now therefore, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.4. and as recorded below:

Requirements A-P [by reference]

**Vote of 4 in favor 0 against 0 abstaining**

**NOW THEREFORE** the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby votes to grant **Approval for the Development** at the above referenced property, with waivers granted as noted below and contingent upon the following conditions per Title 16.10.8.2.1., Conditions for Final Subdivision Plan Approval and Conditions of Approval.

**Vote of 4 in favor 0 against 0 abstaining**

**Waivers:** The following waivers are not applicable to the proposed application as an existing property with no further development.

1. 16.10.5.2.B.10.1 Existing contours and finished grade elevations
2. 16.10.5.2.C.6 Erosion and sedimentation control plan
3. 16.10.5.2.C.7 Stormwater plan
4. 16.8 (Table 1) Street length to hammerhead emergency turn around
5. 16.8 (Table 1) Existing traveled way of gravel, 18 feet wide.
6. Scale from 1"=30 feet to 1"=40 feet

**Vote of 4 in favor 0 against 0 abstaining**

**Conditions:**

1. Prior to the Town release of the signed plans the applicant must pay all outstanding fees associated with the permitting, including, but not limited to newspaper advertisements and abutter notification.
2. The Applicant, prior to any earth moving or soil disturbance, must submit to the Town Planner one (1) mylar copy and two (2) paper copies of the recorded Plan, and any and all related state/federal permits or legal documents that may be required.
3. The Applicant must prepare a revised plan to reflect any changes/additions requested by the Planning Board, and submitted to the Town Planner for approval prior to recording at the York County Registry of Deeds.

**Accordingly, the Planning Board hereby moves to:**

1. Approve the Findings of Fact,
2. Acknowledge their reading,
3. Incorporate them into the meeting minutes by reference,
4. Record their approval by the Planning Board members,
5. Approve the final Plan with the conditions of approval, and authorize the Planning Board Chairman to sign the final Plan upon confirmation by the Town Planner of final plan compliance.

Approved by the Kittery Planning Board on July 26, 2012

**Vote of 4 in favor 0 against 0 abstaining**

This approval by the Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Planning Board Findings of Fact, and any Conditions for or of Approval required by the Planning Board.

An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

**ITEM 3– 10 thru 16 Jewett Lane - Minor Subdivision Plan.** Action: grant or deny approval. Brenda MacKenzie, owner and applicant, requests approval to create a subdivision to include four lots formerly part of a family subdivision located along Jewett Lane, in the Residential Rural Zone, Tax Map 29, Lots 20A, 20B1, 20C and 20D. Agent is Ken Markley, North Easterly Survey, Inc.

**Mr. Emerson** asked the Town Attorney to address how this subdivision, beginning as a family subdivision, came before the Board.

**Duncan McEachern** explained there are exemptions in the subdivision law for lots conveyed to family members, but this specific subdivision did not continue in that direction. One lot was conveyed to a minor and, within one month, the lot was sold to an abutter. When a lot is conveyed to an abutter a separate lot cannot be created. In this case, even though the sold lot attaches to an abutters property, it remains a separate lot of record. **Mr. Markley** stated if a lot is unimproved it must be combined. **Mr. MacKenzie** stated it is not his responsibility to merge the lots, but the purchaser. **Mr. Markley** stated he thought it would be better to go through the subdivision review process to avoid future confusion or problems within the next five years or more. Mr. McEachern stated the Board is essentially approving a

subdivision after the fact. **Mr. Balano** asked if there is anything in the ordinance that would not permit approval of this subdivision. **Mr. Mylroie** stated the submittal was to help clean up action previously taken, and noted this could be combined as a preliminary and final review. **Mr. Kelly** stated he was not prepared to grant final approval at this time, as there are remaining issues to be resolved, including acceptance by the Fire Chief of a fire truck turnaround, stormwater management, and existing vegetation. **Mr. Mylroie** stated this application has received peer review and there is a staff recommendation that individual lot owners be responsible for submitting a stormwater management and erosion control plan as part of their building permit application. This requirement and review of such plans would be included on the final plan and property card. Additionally, it is recommended that trees along the front yard setback be retained except as may need to be removed for utility and/or driveway access. **Mr. Markley** will provide revised wording for the Board to consider prior to inclusion on the final plan. **Mr. Mylroie** reviewed the outstanding issues identified in the plan review notes, some of which have subsequently been addressed by the applicant.

**Mr. Kelly moved** to grant preliminary plan approval.

**Mr. Balano seconded**

**Motion carries unanimously by all members present**

**ITEM 4– Beatrice Way Subdivision –Approved Subdivision Time Extension Request - Operation Blessing Limited Partnership**, requests a second time extension for one year to complete the construction of a previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site identified as Tax Map 61 Lot 08, consisting of ±3.2 acres situated in the Residential - Rural (R-RL) Zoning District.

The applicant was not present. **Mr. Mylroie** noted the applicant presented a letter requesting a one year extension to complete the paving of the roadway between Highpoint Circle and Kittree Lane. He explained the subdivision was approved and Highpoint Circle was subsequently accepted as a public road. He noted there is a connection or extension to the subdivision that accesses Wood Lot Road, and has been used by trucks for logging activity and construction workers. Residents want to limit vehicular use via this connection using boulders to block access. **Mr. Mylroie** proposed that a condition be included on the time extension requested by the developer to place posts or boulders along that area to prevent vehicular access. **Mr. Kelly** summarized that it is used as a road, but was never approved as a road. **Earldean Wells** asked if there was supposed to be a hydrant or cistern at this location, and believed something is in the file regarding this. Discussion followed as to the size and placement of boulders, the time this project has taken to be completed and the remaining undeveloped lots.

**Mr. Melanson moved** to grant a one year extension to Operation Blessing Limited Partnership to complete construction of the 3-lot subdivision roadway between Highpoint Circle and Kittree Lane, with the condition that access currently gained across the paved fire equipment turnaround be blocked with suitable materials acceptable by the Town Planner and developer.

**Mr. Kelly seconded**

It was requested that a date for the extension be included in the motion.

**Mr. Melanson amended his motion** as made to include the extension date of August 28, 2012.

**Mr. Kelly seconded**

**Mr. Emerson** noted he would like applicants to be present when asking for time extensions in the future. It was noted that the motion to include a condition may be out of order as the applicant simply asked for a time extension and this was how it was advertised. The applicant is not present to respond to the observations and subsequent condition. Following discussion, **Mr. Kelly** suggested the motion be

withdrawn and ask the applicant to appear before the Board to discuss the concerns presented by Mr. Mylroie.

**Mr. Melanson withdrew his motion**

**Mr. Melanson moved** to continue the review of the extension request by Operation Blessing Limited Partnership and invite the applicant to appear before the Board to discuss the extension and other concerns.

**Mr. Balano seconded**

**Motion carries unanimously by all members present**

Mr. Emerson asked Mr. Mylroie to inform applicants that they are required to appear before the Board when asking for extensions.

Break

**ITEM 5– (20 minutes) - Town Planner Items:**

A. T-15 Contract Zoning Planning Board response to Town Council; B. Other Updates.

**Mr. Mylroie** summarized the concept of a contract zone and presented an example of how a parcel could be developed under a contract zone review. Contract zone review is more intense, with multiple public hearings on the Planning Board and Council level. Essentially, ordinance requirements may be modified, in harmony with the Comprehensive Plan, to develop a parcel that better suits the needs of the community. A neighborhood or commercial area could be enhanced through a contract zone with the developer providing improved public infrastructure, access, design and/or landscaping in exchange for zone modifications under a contract agreement with the Town. Board members also discussed general zone changes in commercial areas as an avenue to increase economic development rather than resorting to contract zoning. **Mr. Emerson** noted the Council has asked the Board to consider an ordinance proposal to include a provision for contract zoning. In considering the proposed ordinance, the Board needs to consider the necessity for contract zoning against existing ordinance restrictions and allowances. **Mr. Mylroie** noted the burden of proof for the need for contract zoning lies with the developer. Members agreed a workshop with a full Board should be scheduled. Others involved in the current draft (Councilman Beers, David Lincoln) should also participate in the workshop and follow-up public hearings.

A workshop to discuss Contract Zoning was scheduled for August 23, 2012.

**August 14, 2012, 6:00 p.m.** - Rice Public Library is holding a workshop to discuss the library's future plans.

**August 16, 2012, 6:00 p.m.** – Public Works workshop on park plan as part of the Comprehensive Plan

**Mr. Kelly moved** to adjourn

**Mr. Balano seconded**

**Motion carries unanimously by all members present**

The Kittery Planning Board meeting of July 26, 2012 adjourned at 8:35 p.m.

Submitted by Jan Fisk, Recorder – July 31, 2012